CASE NO. 95-937

(2)

Supreme Court, U.S.
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In
The Supreme Court
of the United States

October Term 1995

JAMES H. & ROSA ANN COSSETT,

PETITIONERS,

-V-

WILLIAM JEFFERSON CLINTON, ET AL.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

RESPONDENT ADMINISTRATOR OF THE OHIO MASONIC HOME'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should this Court Deny the Petition for Certiorari Because the Petition Is Incomprehensible and Frivolous?

2. Should this Court Order Petitioners to Pay to Respondent Administrator of The Ohio Masonic Home Double Court Costs and the Respondent's Reasonable Attorney's Fees and Expenses Incurred in Opposing the Petition for Certiorari?

3. Assuming arguendo that the Petition is Not Incomprehensible and Frivolous, Should this Court Dismiss the Petition Because the Court Lacks Jurisdiction?

4. Assuming arguendo that the Petition Confers Jurisdiction upon this Court and Is Not Incomprehensible and Frivolous, Should this Court Deny the Petition Because It Raises No Important Issue of Federal Law and Identifies No Conflict among State or Federal Courts?

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STATEMENT OF THE CASE

Over the years, Petitioners James H. Cossett and Rosa Ann Cossett, a married couple, continually have filed unintelligible and frivolous complaints and petitions in various federal and state courts. For reasons which will become apparent, the Cossetts almost always have proceeded pro se.

The Cossetts apparently bear some ill will against The Ohio Masonic Home relating to the foreclosure sale of the Cossetts' family home in the early 1980's. Thus, the Administrator of The Ohio Masonic Home sometimes is named as a defendant or respondent in the Cossetts' numerous legal filings.

On October 10, 1995, the Cossetts initiated this action by filing a document styled "Complaint for Writ of Mandamus" with the Supreme Court of Ohio. That document named approximately one hundred and seven respondents, including the President, the

governors of the several states, a Judge of the Clark County, Ohio, Court of Common Pleas, "Federealism Summit," and the then Administrator of The Ohio Masonic Home.

Due to its rambling and incoherent content, the "Complaint for Writ of Mandamus" generally was unintelligible, but it did set forth a list of numbered "Demands for Relief." These demands included stopping "the evil 'Process; Mandates' desecration of the United States Flag . . . ," "a free State helth [sic] care fund for all persons over sixty-two years of age . . .," "a bounty of $1,911.95 . . . ," "the repeal of the income tax in its entirety . . . ," " taxation within the classes of imposts, excises and duties . . . ," "repeal of the Federal Reserve Act . . . ," and "prosecution as appropriate under God and the Sovereignty of the United States Flag without any yellow fringe Marshall Law Rule."

On October 18, 1995, the same date on which Petitioners filed their "Complaint for Writ of Mandamus," the Supreme Court of Ohio dismissed the action sua sponte "because this Court lacks authority to grant the relief requested in their Complaint." On November 22, 1995, that court denied the Cossetts' Request for Reconsideration. On December 14, 1995, the Cossetts filed their Petition for Writ of Certiorari with this Court.

SUMMARY OF THE ARGUMENT

The Petition for Writ of Certiorari is incoherent and incomprehensible. The Petition should be denied because it lacks meaning upon fair scrutiny and fails to comply with the basic requirements of Supreme Court Rule 14.1.

In this action, Petitioners continue their documented pattern of harassing elected public officials, members of the judiciary, public charities and unwitting private citizens, by naming these persons as defendants and respondents in frivolous and vexatious legal actions. As an appropriate sanction and deterrent in accordance with Supreme Court Rule 42, Petitioners should be ordered to pay to Respondent double court costs and Respondent's reasonable attorney's fees and expenses incurred in opposing the Petition.

Even if deemed wholly or partially intelligible, the Petition should be dismissed or denied because it fails to

satisfy the jurisdictional requirements set forth in 28 U.S.C. § 1257(a) and also fails to identify any compelling reasons authorizing discretionary review under Supreme Court Rule 10.1.

ARGUMENT

'Twas brilling and the slithy toves
Did gyre and gimble in the wabe;
All mimsy were the borgoves,
And the mome wraths outgrabe . . . .

-- Lewis Carroll, Jabberwocky

A. The Petition for Writ of Certiorari Should Be Denied Because It Is Incomprehensible and Frivolous.

Respondent Administrator of The Ohio Masonic Home joins distinguished company in this action as the Cossetts have named among the one hundred and seven respondents the President of the United States, the respective governors of the several states, the Speaker of the United States House of Representatives, and an Ohio Common Pleas Court Judge. Indeed, the Cossetts' pending Petition for Writ of Certiorari marks the second occasion on which they have pursued a claim against the President of the United States before this Court. See State ex rel. Cossett v. Clinton, 71 Ohio St. 3d 1411 (1994), reconsideration denied, 71 Ohio St. 3d 1437 (1994), cert. denied, _____ U.S.

_____, 115 S.Ct. 1825 (1995), rehearing denied, _____ U.S. _____, 115 S.Ct. 2291 (1995). The Supreme Court of Ohio dismissed the earlier action, which sought a writ of prohibition, sua sponte. Id.

In addition to elected officials, the Federal Judiciary also has been targeted by the Cossetts. See Cossett v. Federal Judiciary, 959 F.2d 234, 1992 WL 68230 (6th Cir. 1992), cert. denied, _____ U.S. _____, 113 S.Ct. 975 (1993), rehearing denied, _____ U.S. _____, 114 S.Ct. 339 (1993).

Regarding the Cossetts' action against "the Federal Judiciary" (and numerous other defendants, including then United States Senator Joseph R. Biden and then United States Representative Jack Brooks), the Sixth Circuit stated as follows:

> The Cossetts have filed an incomprehensible brief and 'appendices' in this court. Appellee . . . has filed a brief in which he requests double costs and attorney fees pursuant to Fed. R. App. 38.
>
> Upon consideration, it is concluded that the district court

> did not abuse its discretion in denying the motion for relief from judgment. Moreover, it is determined that the [appellee's] request for double costs and attorney fees under Fed. R. App. 38 should be granted, as this appeal is frivolous, unreasonable, and without foundation, and appears to have been pursued for harassment or other improper purpose. Accordingly, appellee . . . is directed to submit a bill of costs and attorney fees within fourteen days of the date of this order.

Cossett v. The Federal Judiciary, 1992 WL 68230 at *1 (upholding district court's dismissal of the Cossetts' action for failure to state a claim upon which relief may be granted) (emphasis supplied).

When Petitioner James Cossett brought action against United States Magistrate Judge Michael R. Merz of the United States District Court for the Southern District of Ohio, Ohio Governor George V. Voinovich, the Resolution Trust Corporation, and other defendants, an Ohio Court of Common Pleas entered summary judgment in favor of all the defendants. See Cossett v. Resolution Trust

Corp., No. 94-CA-31, 1994 WL 543229 (Ohio App. October 5, 1994), appeal dismissed sua sponte, 71 Ohio St. 3d 1465 (1995). Upon Mr. Cossett's inevitable appeal of this decision, the Ohio Court of Appeals commented as follows:

> Cossett, who appears in this litigation pro se, has failed to comply in any meaningful way with the requirements of App. R. 16 pertaining to briefs. Specifically, there is no statement of the case, no statement of facts and no assignments of error. Accordingly, this court has had great difficulty in discerning the origins of this controversy . . . ."

Id. (emphasis supplied)

In Cossett v. Merchants & Mechanics Federal Savings & Loan Association, No. CA 2636, 1990 WL 27500 (Ohio App. March 15, 1989), the court stated, "The Cossetts' opening and reply briefs fail completely to either point out the claimed errors in the record or to separately argue the claimed errors. We choose to disregard these claims

of error." A concurring judge commented as follows:

> This court has made every effort to comprehend, and then rule upon, errors assigned by pro se appellants, no matter how unartfully framed. I am sure that we will continue to do so.
>
> In this case, however, after having read the appellant's brief, I am simply unable to deduce the nature of the errors claimed to have been made by the trial court. I concur fully in the opinion of this court.

Id.

Further examples of the Cossetts' history of initiating frivolous litigation include Cossett v. Ledford, 772 F.2d 906, 1985 WL 13655 (6th Cir. 1985), cert. denied, 474 U.S. 1065 (1986), rehearing denied, 475 U.S. 1062 (1986) (appeal not based upon final appealable order and untimely in any event); Cossett v. Merchants & Mechanics Federal Savings & Loan Association, 835 F.2d 877, 1987 WL 25956 (6th Cir. 1987), cert. denied, 488 U.S. 1962 (1988) (no final appealable order); and Cossett v. Merchants & Mechanics Federal Savings & Loan

Association, 48 Ohio St. 3d 703 (1990), rehearing denied, 51 Ohio St. 3d 705 (1990).

The Petition produced by the Cossetts in the present action adheres to their established pattern of filing confoundingly incoherent pleadings. The Petition lacks a concise statement of the grounds on which the jurisdiction of this Court is invoked, the legal authorities involved in the case, the facts material to the consideration of the questions presented, and an argument amplifying the reasons relied upon for allowance of a writ of certiorari, all of which are required by Supreme Court Rule 14.1.

Supreme Court Rule 14.5 provides, "The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition." Petitioners'

failure in this regard is notable. Accordingly, the Cossetts' petition should be denied.

B. This Court Should Order the Petitioners to Pay to the Respondent Administrator of The Ohio Masonic Home Double Court Costs and His Attorney's Fees and Expenses.

Supreme Court Rule 42 provides, "When a petition for a writ of certiorari . . . is frivolous, the Court may award the respondent or appellee just damages and single or double costs . . . against the petitioner . . . ."

The Cossetts' record of frivolous litigation pursued through preposterous pleadings is amply, though incompletely,[1] documented in the preceding subsection of this brief. This record demonstrates that the Cossetts will continue to assail unwitting defendants and courts, including this Court, with expensive and time-consuming jabberwocky until sufficient

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[1] The great majority of the Cossetts' filings are addressed in unreported opinions of the Ohio Common Pleas Courts.

sanctions and deterrents are applied. Respondent Administrator of The Ohio Masonic Home understandably fears that absent forceful discouragement, the Cossetts' will continue their brazen campaign of legal harassment indefinitely.

In Cossett v. Federal Judiciary, 959 F.2d 234, 1992 WL 68230, the Sixth Circuit ordered the Cossetts to pay double costs and attorneys' fees to one of the appellees. Consistent with this persuasive though non-binding precedent, this Court should order the Petitioners to pay to the Respondent double court costs and the Respondent's reasonable attorney's fees and expenses incurred in opposing the Petition for Certiorari.

C. Assuming arguendo that Any Portion of the Petition For Writ of Certiorari Is Intelligible and Non-Frivolous, this Court Should Dismiss the Petition Because the Court Lacks Jurisdiction.

To the extent any statements in the Cossetts' Petition for Writ of Certiorari may be deemed intelligible, the statements

are insufficient to invoke federal jurisdiction.

The Cossetts have requested this Court to grant discretionary review of a judgment entered by the highest court of Ohio. The United States Supreme Court is a court of limited jurisdiction, and the circumstances under which this Court may review a decision rendered by the highest court of a state are determined by federal statute.

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a).

The Cossetts' Petition contains a section entitled, "GROUNDS TO INVOKE

JURISDICTION." However, neither in that section nor in any other section of their Petition do the Cossetts articulate the manner in which any United States treaty, statute, law, or constitutional provision is implicated in whatever dispute the Cossetts may have in mind.

Accordingly, even if portions of the Cossetts' Petition for Writ of Certiorari are deemed to be intelligible, the Petition should be dismissed for lack of jurisdiction, and the Administrator of The Ohio Masonic Home should be awarded damages and costs as requested in the preceding subsection of this brief.

D. Assuming <u>arguendo</u> that Any Portion of the Petition for Writ of Certiorari Is Intelligible and Non-Frivolous, and Confers Jurisdiction upon this Court, the Court Should Deny the Petition Because No Compelling Reason to Grant Review Exists.

The utterly frivolous nature of the Cossetts' Petition is underscored by its failure to address any of the factors which determine whether the Court will exercise its discretion to review a matter on writ of

certiorari. These factors are outlined in Supreme Court Rule 10.1.

> 1. A review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the court considers:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided a federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and unusual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided a federal

> question in a way that conflicts with applicable decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Sup. Ct. R. 10.1. "[I]t is very important that [this Court] be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties . . . ." Rice v. Sioux City Memorial Park Cemetery, Inc., 349 U.S. 70, 79 (1955).

Here the Supreme Court of Ohio held only that it lacked authority to abolish the federal income tax, repeal the Federal Reserve Act, prosecute "as appropriate under God and the sovereignty of the United States Flag without any yellow fringe Marshall Law Rule," or otherwise comply with the outlandish "Demands For Relief" contained in the Cossetts' Complaint for Writ of Mandamus. This holding presents no

important question of federal law, and can scarcely be considered a matter of conflict or controversy among different courts.

Accordingly, even assuming that the Cossetts' Petition for Writ of Certiorari is intelligible and confers jurisdiction upon this Court, the Court nevertheless should deny the Petition because no compelling reasons exist to grant review.

CONCLUSION

Respondent Administrator of The Ohio Masonic Home respectfully requests this Court to issue an order denying or dismissing the Petition for Writ of Certiorari and ordering Petitioners to pay to Respondent Administrator of The Ohio Masonic Home double court costs and the Respondent's reasonable attorneys' fees and expenses incurred in opposing the Petition.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned hereby certifies that three (3) copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were sent by first class United States mail, postage prepaid, to the Petitioners at 5783 Xenia Street, Bowersville, Ohio 45307, to the Solicitor General of the United States, Room 5614, Department of Justice, 10th St. and Constitution Avenue, NW, Washington, D.C. 20530, and to each of the Respondents at their respective addresses as set forth in the Petition, on the 16th day of January, 1996.

In the same manner and on the same date, courtesy copies of the foregoing Brief were forwarded to The Honorable Janet Reno, United States Attorney General, 5111 Main Justice Building, 10th St. & Constitution Avenue, NW, Washington, D.C. 20530, and to The Honorable Betty Montgomery, Attorney

General of Ohio, State Office Tower, 30 E. Broad Street, Columbus, OH 43215.

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